



Whistleblower protections, explained

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At the heart of the impeachment inquiry into President Donald Trump is the whistleblower whose complaint ignited the probe. Here's what you need to know about the U.S. laws meant to protect whistleblowers.

What is a whistleblower?

A federal whistleblower is an employee who reports gross mismanagement, abuse of authority or other illegal or unethical activity to management, authorities or — in the case of the executive branch — to Congress, which has oversight capacity.

What are whistleblower protections?

Federal Legal protections for whistleblowers were enacted through the Whistleblower Protection Act of 1989. The law offers the whistleblower some protection from criminal prosecution and administrative retaliation, such as firing or demotion. Because of concerns about classified information, the protections initially did not include the intelligence community.

Congress established a process for intelligence workers to report misconduct through the 1998 Intelligence Community Whistleblower Protection Act. It wasn't until 2014 that lawmakers codified a directive from President Barack Obama also extending protections against retaliation to intelligence officials. Despite these legal efforts, the law isn't perfect. While non-intelligence civil servants can take retaliation cases to court, the intelligence community does not have this privilege due to concerns about classified material. This means intelligence whistleblowers could face punishment at work even if it's illegal, possibly with limited legal recourse.

Did Trump's whistleblower follow protocol?

Short answer: Yes. In recent weeks Trump and his supporters have accused the author of the complaint of being a "deep-state operative." However, both the inspector general for the intelligence community and the acting director of national intelligence have said the individual followed legal procedure. Contrary to Trump's claims, the law does not require a whistleblower to present first-hand information, it only requires a reasonable belief of a violation, said David Colapinto, co-founder and general counsel for the National Whistleblower Center, an advocacy group.

The protocol is for an intelligence official to file a complaint with the inspector general who is expected to refer the matter to the director of national intelligence. In this case, the inspector general alerted the House Intelligence Committee, even though the acting DNI consulted the Department of Justice first.

Will the whistleblower's identity be kept a secret?

The president told reporters he is "trying to find out" the identity of the whistleblower. Ultimately, there's nothing that can block Trump from revealing who he or she is, said Bradley Moss, a whistleblower attorney who specializes in national security. However, the law explicitly tasks the president with enforcing protections against retaliation.

“It is patently offensive and insulting to whistleblowers to have the president talking about how he is going to out this person, how he is going to confront this person,” Moss said. “No matter who is in the Oval Office ... the need for whistleblowers to be able to raise their concerns with confidentiality and anonymity is critical.”

What is unique about the Trump whistleblower complaint?

This is the first time a credible whistleblower case has involved the president. Now, the president is publicly criticizing a person he is mandated by law to protect. Questions also remain about the executive privilege and the president's ability to stymie ongoing investigations against him.

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